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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150908833-6479-01]

RIN 0648-BF37

Mariana Archipelago Fisheries; Remove the CNMI Medium and Large Vessel Bottomfish Prohibited Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would remove the medium and large vessel bottomfish prohibited fishing areas in the Commonwealth of the Northern Mariana Islands (CNMI). Conditions in the fishery that led to establishing the prohibited areas are no longer present, and the restriction is no longer necessary. The Western Pacific Fishery Management Council recommended Amendment 4 to the Fishery Ecosystem Plan for the Mariana Archipelago (FEP) to remove these prohibited areas, and this proposed rule would implement the recommended change. The intent of the proposed rule is to improve the viability of the CNMI bottomfish fishery and promote optimum yield while preventing overfishing. This proposed rule would also make

an administrative housekeeping change to the regulations for the CNMI management subarea crustacean fishing.

DATES: NMFS must receive comments by [*insert date 45 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0115, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0115, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept

anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) and NMFS prepared an environmental analysis that describes the potential impacts on the human environment that could result from the proposed rule. The environmental analysis and other supporting documents are available at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIRO Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: In 2008, the Council recommended establishing, and NMFS implemented, prohibited areas for commercial fishing for Mariana bottomfish management unit species (BMUS) in the CNMI. Federal regulations currently prohibit medium and large vessels (40 ft and greater) from commercial fishing for BMUS in certain Federal waters around the CNMI. The prohibited areas include waters within approximately 50 nm of the Southern Islands (i.e., Rota, Aguigan (alt. Aguijan), Tinian, Saipan, and Farallon de Medinilla) and within 10 nm of Alamagan Island. The Council established the prohibited areas to prevent large bottomfish vessels based in Guam from traveling to CNMI fishing grounds. At the time, the Council was concerned that the Guam vessels could negatively affect fish stocks

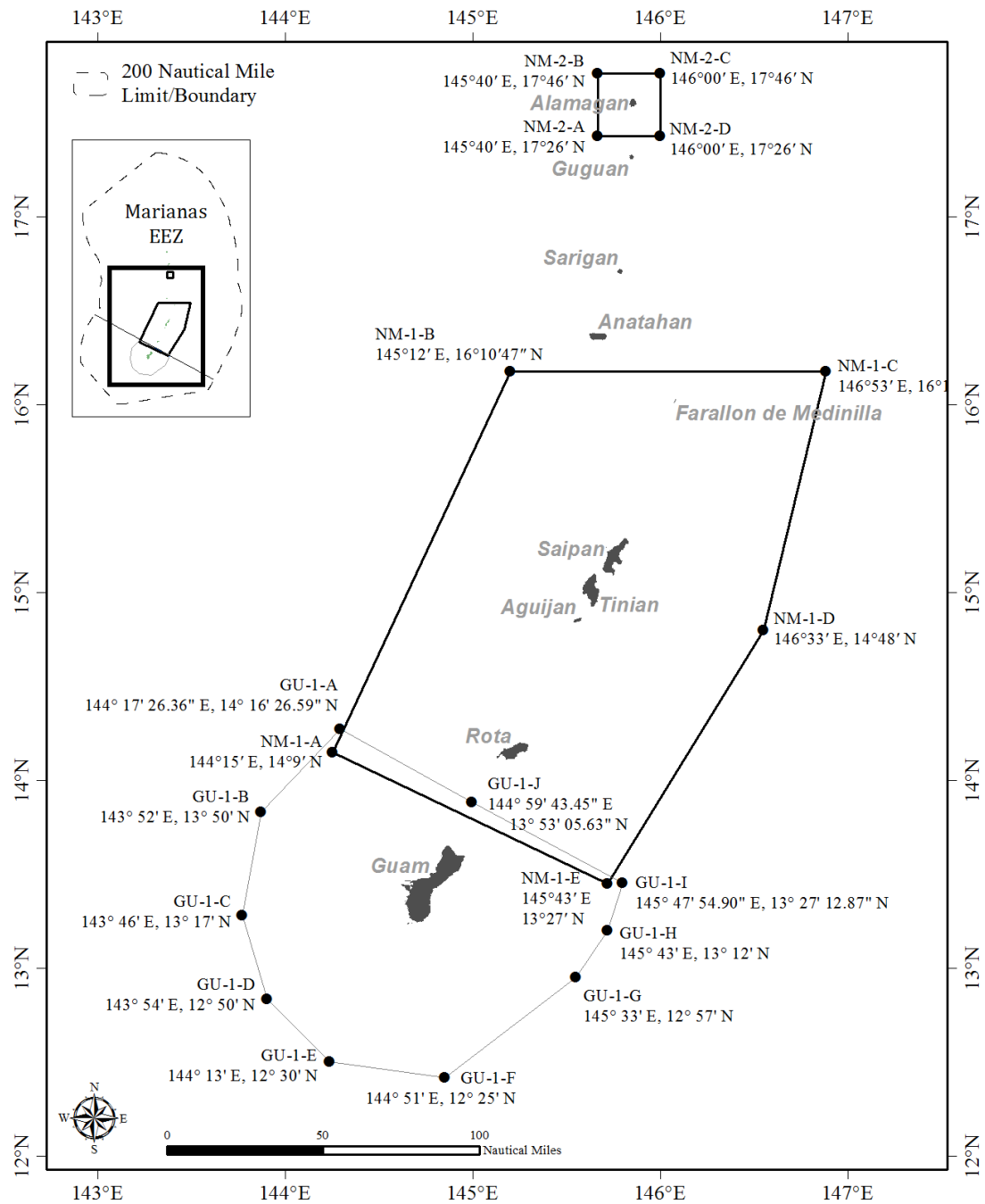
and local fisheries through stock depletion, catch competition, and gear conflicts. You may read more about the establishment of the prohibited areas in the 2008 proposed rule (73 FR 51992, September 8, 2008) and final rule (73 FR 75615, December 12, 2008).

The CNMI bottomfish fishery has changed since 2008, and the conditions that led the Council and NMFS to establish the prohibited areas are no longer present. Large vessels from Guam have not shown interest in fishing for CNMI bottomfish. The prohibited areas may also be negatively impacting the CNMI bottomfish fishery. Only a few small vessels have been operating on a regular basis, and the few medium and large vessels have faced declining participation, possibly resulting from higher fuel costs that prevent them from traveling beyond the prohibited areas. The prohibited areas may be contributing to the potential under-utilization of the bottomfish resource in CNMI and removing them may promote optimum yield.

To address fishery conditions resulting from the CNMI prohibited areas, the Council recommended that NMFS remove them. The Council and NMFS would continue to manage the fishery under a suite of management requirements that include the specification of annual catch limits and accountability measures, post-season review of catches and

effort including against ACLs, requirements for vessel markings, Federal catch and sales reporting, and the vessel monitoring system. The fishing requirements for the Marianas Trench Marine National Monument would also remain unchanged. Fig. 1 shows the current prohibited areas.

Figure 1. Current CNMI medium and large vessel prohibited areas and Guam large vessel prohibited area. This proposed rule would remove the areas that start with "NM."



This proposed rule is intended to improve the efficiency and economic viability of the CNMI bottomfish fishery. The Council and NMFS would annually review the effects of the proposed action. Any proposed changes would be subject to additional environmental review and opportunity for public review and comment.

This proposed rule would also include two administrative housekeeping changes: corrections to the description of the CNMI management subarea and to the CNMI permit area designation for crustacean fishing. First, prior to 2013, the CNMI management subarea was divided into an inshore area (the EEZ within 3 nm of the shoreline) and an offshore area (the EEZ seaward of 3 nm from the shoreline). In 2013, under Public Law 113-34 (which amended Public Law 94-435) the United States transferred nearshore waters (0-3 nm) to the CNMI, so this distinction is no longer necessary. Second, the regulations at § 665.442(a)(1) currently incorrectly refer to Permit Area 3, which is associated with American Samoa. The correct reference for the CNMI is Crustacean Permit Area 5.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with

the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Regulatory Flexibility Act: Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

The Western Pacific Fishery Management Council recommended a prohibited area in the U.S. Exclusive Economic Zone around the Commonwealth of the Mariana Islands (CNMI), among other requirements, for medium and large (i.e., vessels 40 ft and greater) vessels commercially fishing for bottomfish to separate the fishing activity of these vessels from that of smaller vessels. NMFS implemented the Council's recommendation in 2008 (73 FR 75615; December 12, 2008).

The Council established the prohibited area as a precaution in response to concerns expressed by CNMI

fishermen that Guam bottomfish fishermen would travel to fish in CNMI waters after establishment of the large vessel prohibited fishing area in Guam. CNMI fishermen were concerned that such additional fishing by the vessels from Guam would create localized depletion of bottomfish, gear conflicts, and catch competition. Few medium and large vessels, however, are capable of bottomfish fishing, and it appears that few medium and large vessels would enter the CNMI bottomfish fishery. Recent CNMI bottomfish harvests are far below recent Annual Catch Limits set for the fishery. Therefore, the current prohibited area may not be needed to ensure the sustainability of the CNMI bottomfish fishery and, in fact, may be constraining it.

This proposed rule would provide economic relief to the CNMI medium and large bottomfish vessel fleet, through removing the prohibition from commercial fishing for BMUS within the prohibited areas. The proposed action would allow the medium and large longline vessels to fish within additional areas within Federal waters. The proposed action would improve the efficiency and economic viability of the CNMI bottomfish longline fleet.

The proposed action would directly apply to operators of medium and large bottomfish vessels that would potentially fish within CNMI currently prohibited areas, in

particular, CNMI and Guam bottomfish permit holders. This permit is required of all vessels commercially fishing for, landing, or transshipping BMUS in the EEZ around the CNMI.

Based on information presented below, NMFS has determined that all affected entities are small entities under the SBA definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have gross annual receipts below \$20.5 million (NAICS code: 114111). Since 2012, NMFS has issued fewer than five CNMI and Guam bottomfish permits to medium or large vessels annually. Between 2012 and 2014 NMFS issued an average of eight CNMI Bottomfish permits with less than one classified as CNMI medium or large bottomfish vessel. In Guam, only large bottomfish vessels (50 ft or greater) are required to have a permit. Between 2012 and 2014, NMFS issued an average of two Guam bottomfish permits. During that same time, annual revenue from all bottomfish species landed by the CNMI bottomfish fishery ranged from \$23,947 - \$85,294, and ranged from \$13,650-\$65,676 when only considering BMUS catch. For Guam based bottomfish boats, revenue earned from bottomfish catch ranged from \$18,433 - \$36,635. Therefore, NMFS estimates that this action would potentially affect up to

five medium to large bottomfish vessels directly, at least initially before the potential for expansion of the larger boat sector is realized.

This proposed action would lift restrictions for the directly affected entities without imposing obligations. Bottomfish vessel owners could choose to upgrade to larger vessels or continue fishing with their current vessels. NMFS does not expect the rule to have disproportionate economic impacts between large and small entities directly affected by this rule, although the small vessels currently allowed to fish throughout the prohibited areas may be indirectly affected by the potential increase in the number of medium and large bottomfish vessels fishing within a portion of the prohibited areas. There would be no disproportionate economic impacts among the universe of potentially affected vessels based on gear, or vessel length. However, due to their proximity to the prohibited areas, vessels based in CNMI would stand to see greater benefit from this action, relative to those based in Guam.

The implementation of this action will not result in significant adverse economic impacts to individual vessels. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on a substantial number of small

entities (as discussed above), organizations, or government jurisdictions. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Commonwealth of the Northern Mariana Islands, Mariana Archipelago Fisheries, Fisheries, Fishing, Guam, Permits, Reporting and recordkeeping requirements.

Dated: June 7, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.402, revise paragraphs (b) and (c) to read as follows:

§ 665.402 Management subareas.

* * * * *

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI, with the inner boundary defined as a line coterminous with the seaward boundary of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 [Amended]

3. In § 665.403, remove and reserve paragraph (b).

4. In § 665.405, revise paragraphs (e) and (f), and remove paragraphs (g) and (h) to read as follows:

§ 665.405 Prohibitions.

* * * * *

(e) Use a vessel to fish commercially for Mariana bottomfish MUS in the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of §665.404(a)(2).

(f) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under §665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea in violation of § 665.14(b).

6. In § 665.442, revise paragraph (a)(1) to read as follows:

§ 665.442 Permits.

(a) * * *

(1) The owner of any vessel used to fish for lobster in Permit Area 5 must have a permit issued for such a vessel.

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[FR Doc. 2016-13852 Filed: 6/10/2016 8:45 am; Publication Date: 6/13/2016]